

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

No. 1:21-cv-00410-LKG

PETER FRANCHOT,

Defendant.

* * * * *

DEFENDANT'S MOTION FOR POSTPONEMENT

Counsel for defendant Peter Franchot, Comptroller of the State of Maryland, requests postponement of the hearing the Court has scheduled for February 17, 2022, due to the demands of expedited proceedings the Court of Appeals of Maryland has ordered with respect to challenges to Maryland's Legislative Districting Plan of 2022 ("Districting Plan"), Senate Joint Resolution 2 (enacted January 27, 2022).

1. Article III, § 5 of the Maryland Constitution permits any registered voter to challenge a legislative districting plan by filing a petition with the Court of Appeals, but Maryland law does not otherwise prescribe the procedures pertinent to such a petition. For this reason, on January 28, 2022, the Office of the Attorney General, on behalf of the State of Maryland, filed in the Court of Appeals of Maryland a motion (attached as Exhibit 1) requesting that the Court promulgate procedures for petitions challenging the Districting Plan. The motion alerted the Court to statutory deadlines pertaining to elections for the State Senate and House of Delegates, attached a table setting forth the various deadlines, and expressed the "need for prompt establishment of

procedures to permit expeditious resolution of any petition,” but the motion otherwise left it to the Court of Appeals to determine those procedures and set a schedule.

2. Later that same day, January 28, 2022, the Court of Appeals issued an order (Exhibit 2) establishing procedures and scheduling for petitions challenging the Districting Plan, as authorized by Article III, § 5 of the Maryland Constitution, and appointing the Honorable Alan M. Wilner, retired judge of the Court of Appeals, to serve as Special Magistrate.

3. The order recognizes that “limitations and constraints” imposed by the deadlines pertaining to elections dictate that “time is of the essence in determining the validity of the 2022 legislative districting plan.” Ex. 2 at 2. The order sets the following schedule:

Filing deadline for petitions with proposed alternative districting plans	February 10, 2022
State’s response to all petitions and alternative plans	February 15, 2022
Scheduling conference to determine timing of further proceedings before Special Magistrate	February 17, 2022 at 10:00 a.m.
Additional deadlines and procedures	To be determined by further order of the Court of Appeals

Ex. 2 at 2-3, ¶¶ 1, 2, 4, 5.

4. Litigation generated by challenges to decennial redistricting has in past decades placed considerable demands on the resources of the Office of the Attorney General, and it has necessitated requests for postponements, continuances, and extensions in other pending cases, which courts have accommodated. This year’s legislative redistricting presents greater difficulties, because the schedule established by the January 28, 2022 order is more accelerated than the Court of Appeals has required for petitions challenging previous decennial legislative districting plans. For example, in 2002, the Court of Appeals did not issue its order promulgating procedures and

setting a schedule for petitions challenging State legislative districting until March 1, 2002, *see In re Legislative Districting of State*, 370 Md. 312, 329 & n.11 (2002), and in 2012 the analogous order was not issued until March 6, 2012, *see In re 2012 Legislative Districting*, 436 Md. 121, 128 (2013).

5. In addition to litigation concerning State legislative districting, undersigned counsel also has challenges to the recently enacted congressional redistricting plan already pending in the Circuit Court for Anne Arundel County. In *Szeliga v. Lamone*, No. C-02-cv-21-001816, the State filed its motion to dismiss or, in the alternative, motion for summary judgment on January 31, 2022, and has a response to motion to intervene due February 7, 2022. In *Parrott v. Lamone*, No. C-02-cv-21-001773, the State's motion to dismiss and response to motion to intervene are due February 22, 2022.

6. The procedures and schedule newly instituted by the Court of Appeals for State legislative redistricting challenges will require undersigned counsel and other Assistant Attorneys General to devote their time to preparing responses to an as yet unknown number of petitions and proposed alternative districting plans, while preparing for further proceedings to be conducted by the Special Magistrate and while addressing existing obligations in the congressional redistricting cases, all during the same period that otherwise would have been devoted to preparing for the hearing this Court has scheduled for February 17, 2022.

7. For these reasons, defendant requests that the February 17, 2022 hearing be postponed for at least a period of 30 days, to be rescheduled as this Court shall determine.

8. Undersigned counsel has conferred with counsel for plaintiffs, who are unwilling to consent to this motion and intend to file a response.

CONCLUSION

The Court should grant the request for postponement. A proposed Order is being filed with this motion.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Steven M. Sullivan

JULIA DOYLE BERNHARDT
Federal Bar No. 25300
jbernhardt@oag.state.md.us
STEVEN M. SULLIVAN
Federal Bar No. 24930
ssullivan@oag.state.md.us
Assistant Attorneys General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7291
(410) 576-6955 (facsimile)

February 2, 2022

Attorneys for Defendant